

REMARKS

Reconsideration of the above-identified application, as amended, is respectfully requested.

In the Final Rejection dated August 15, 2003, the Examiner finally rejected Claims 1-19 under 35 U.S.C. §103(a) as being unpatentable over Published PCT Patent Application No. WO 98/10361 to Walker et al. ("Walker").

In his rejection, the Examiner again cites Walker as allegedly directed to buyer-driven commerce whereby the user is provided with access to an online store having products with descriptions of attributes such as features and prices and means for receiving requests for products and providing the users with bid conditions for the selected products or services, and then providing the user with second bid(s) originating from other stores participating in a reverse auction that are pre-registered and agree to provide the second bids for a related product at a checkout time or after placing the bid conditions, with each of the second bids conforming to the bid conditions, etc.

The Examiner has not specified any instance in the Walker reference as directly teaching these basic limitations set forth in Claim 1, but rather relies on Official Notice, inherency or implicitness in this rejection.

In response to this rejection, in order to more clearly define the invention and place the claims in better form for Appeal, applicants amend independent Claim 1 to highlight the feature that is neither taught nor suggested in the cited Walker patent- namely, the provision of a hybrid shopping mode that combines the fixed price shopping and implementation of an auction (i.e., real-time dynamic price shopping). In the present invention, as now set forth in amended Claim 1, a user commences his/her shopping on any

online retailer (e.g., Amazon.com, Macys.com, etc.). If the user desires, the user can finish her shopping in the conventional fixed shopping mode, browsing the catalog, finding a product of interest, putting it in a shopping cart, and paying the fixed price found in the catalog. What the present invention teaches is, however, if the user likes, is a dynamic shopping ability, whereby the user may initiate an auction on any web site, on any selected product that user finds in the online retailers catalog, by inviting registered sellers (retailers) to make offers on the product through a broker server. After the auction is completed, the user can go back to the fixed pricing shopping mode anytime for any online retailer.

Thus, Claim 1 has been amended to clarify this hybrid shopping mode feature combining both fixed shopping and dynamic shopping modes. Particularly, amended Claim 1 now sets forth a method of doing business on a network comprising steps of:

providing a user with access to a preferred online store through one or more networks, the online store comprising a seller that has been identified and preselected by the user and having one or more products each with a product description and a price, the product description and price being provided to the user;

receiving one or more selection requests for the one or more products, one of the products being a selected product;

enabling the user to conduct a product purchase transaction for the selected product in a fixed shopping mode directly via a seller's online store or, alternatively enabling the user to dynamic price shop by:

providing the user with access to one or more bid conditions for the selected product and receiving a bid request from said user:

in response to the received bid request, implementing an auction in real-time for generating second bids for the selected product;

providing the user with one or more second bids for the selected product, each of the second bids originating from one or more other stores that participated in the auction, the other stores comprising sellers that have been identified and preselected by the user, and each of the second bids conforming to the bid conditions; and

enabling said user to complete a purchase transaction either from seller's online store or one of said other stores.

Respectfully, no new matter is being entered by entry of this clarifying amendment and full support for each of the added limitations may be found in the present specification from page 10, line 17 through page 15, line 3 and in connection with Figures 2(a)-2(b) regarding the business process. The "real-time" aspect of the auction is inherent, as shown as steps 307-312, Figures 3(a)-3(b) wherein as soon as the user submits a bid request having a set of bid conditions, the bidders, i.e., pre-selected on-line or off-line stores, may submit their bids (Step 308, Figure 3A) "within a reasonably short period of time" (See specification, page 18, line 5).

Respectfully, Walker does not disclose this combination of dynamic and fixed pricing shopping. The essence of what Walker teaches could be characterized as an auction system that employs a central controller (200) (Walker, Figure 1). This system bears significant similarity with electronic marketplaces on the Internet which was popular late last decade especially in the context of Business-To-Business commerce. Note that the type of system described in Walker is limited in several aspects: First, it limits the space where buyers and sellers perform commerce activities. That is, buyers and sellers must come to this

prefixed place called central controller (e.g., an electronic marketplace Web site) to use what Walker discloses. All the subsequent commerce activities, including the promulgation of bids and offers, matchmaking, and performing a transaction occurs basically in this central controller. Additionally, what Walker teaches is only a single commerce mode, i.e., auction. It does not provide other shopping modes such as fixed price shopping.

A further difference is that the present invention teaches a system and method by which a shopper can start shopping in any retailer's online/Web store instead of a fixed place like the central controller or electronic marketplace. The shopper may then browse product information in one or more retailers' sites, and start auction on any site, on any product, at any time, by using a broker server that handles auctions between the shopper and the participating sellers.

Thus, unlike Walker, the present invention as claimed in amended Claim 1 does not limit the shoppers on where they can commence shopping and initiate auctions.

Another difference is that the present invention teaches a real-time auction, where an auction is launched immediately instead of being scheduled, it lasts only short period of time, e.g., a few minutes before being closed, and the shopper selects the winner on the spot. Unlike this invention, Walker teaches a conventional auction mechanism with more complicated scheduling requirements, winner determination rules, etc.

Furthermore, unlike Walker, this invention teaches the purchases of complex, configurable products and services by using the disclosed system and method as set forth in Claims 9, 16, and 18. Moreover, unlike Walker, this invention teaches the use of multiple attributes of products and services, not just the price, in determining one or more winners of auctions performed in the disclosed system (See present Claim 3). In connection with this

feature, unlike Walker, the present invention teaches the recommendation of comparable and related products and services as well as the selected products in the auction process (See present Claims 3 and 5). Further, unlike Walker, this invention teaches the use of joint bidding on a complex product or service constructed jointly by two or more sellers (See present Claim 17).

Furthermore, as argued in applicants previous response submitted June 12, 2003, incorporated by reference herein, a major difference is that a user (e.g., a remote prospective buyer) who selects one or more products from a set of products offered by a preferred seller that was identified and selected by the user, and who also receives one or more second bids to buy the user-selected products(s) from a plurality of other sellers whose offers conform to the bid conditions offered by the preferred seller, and the other sellers also were identified and selected by the buyer, which, as previously argued, is neither taught nor suggested by Walker. That is, in present Claim 1, all sellers have been preselected by the buyer, and the buyer only receives offers of sale from sellers with whom he wishes to transact business.

For the reasons aforesaid, applicant respectfully requests withdrawal of the subject rejection of independent Claim 1 under 35 U.S.C. 103(a) and respectfully solicits allowance of this claim and remaining Claims 2-19 by virtue of their dependency either directly or indirectly from amended Claim 1.

In view of the foregoing remarks herein, it is respectfully submitted that this application is in condition for allowance. Accordingly, it is respectfully requested that this application be allowed and a Notice of Allowance be issued. If the Examiner believes that a

telephone conference with the Applicants' attorneys would be advantageous to the disposition of this case, the Examiner is requested to telephone the undersigned.

Respectfully submitted,



Steven Fischman
Registration No. 34,594

Scully, Scott, Murphy & Presser
400 Garden City Plaza
Garden City, New York 11530

SF:gc